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10/620,903

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Joseph L. Tallal JR.

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EXAMINER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/620,903	<b>Applicant(s)</b> TALLAL, JOSEPH L.	
	<b>Examiner</b> KRISTINE K. RAPILLO	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-7 and 10 - 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-7, 10-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/31/2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/23/2005</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the Request for Continued Examination (RCE) filed November 5, 2008. Claims 1, 8, and 9 are cancelled. Claims 20 - 27 are amended. Claims 2 - 7 and 10 - 27 are presented for examination.

### ***Drawings***

2. The objection to the drawings are hereby withdrawn based on the amendment submitted November 5, 2008.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer.

A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 2 – 7 and 10 – 22 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2 – 7, 12 – 18, 21 -23, and 26 - 28 of copending Application No. 10/620,904 (Tallal). Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitations from the claims of U.S. Application Number 10/620,903 are covered in the claims of U.S. Application 10/620,904.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. The following table is a comparison of all obvious type double patenting claims. The differences in the claims have been bolded, and a summary of the rejection is included in the row directly below the affected claims.

Application 10/620,903	Reference: Application 10/620,904
2. The method as recited in claim 20, wherein the discount price list is a variable discount price list that tracks a known standard <b>pharmaceutical</b> price list.	2. The method as recited in claim 26, wherein the discount price list is a variable discount price list that tracks a known standard <b>service/good</b> price list.
Regarding claim 2, the standard pharmaceutical price list and the standard service/good price list serve the same function in that they both track a standard price list, therefore, claim 2 of this is not patentably distinct from claim 2 of the reference application.	
3. The method as recited in claim 20, wherein the membership fee is paid by the individual	3. The method as recited in claim 26, wherein the membership fee is paid by the individual
Regarding claim 3, a pharmacy benefit manager is providing the same function as a network provider. Each function assumes the responsibility to oversee a health care plan (including pharmaceuticals), in which the pharmacy benefit manager and network provider are the recipients of the membership fees used join the pharmaceutical benefit program or health care plan. Therefore, claim 3 of this application is not patentably distinct from claim 3 of the reference application.	
4. The method as recited in claim 20, wherein the membership fee is paid by the individual's employer.	4. The method as recited in claim 26, wherein the membership fee is paid by the individual's employer.

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Application 10/620,903	Reference: Application 10/620,904
Regarding claim 4: Claim 4 is not patentably distinct from claim 4 of the reference application, therefore, claim 4 is obvious.	
5. The method as recited in claim 20, wherein the membership fee is paid by the individual's business.	5. The method as recited in claim 26, wherein the membership fee is paid by the individual's business.
Regarding claim 5: Claim 5 is not patentably distinct from claim 5 of the reference application, therefore, claim 5 is obvious.	
6. The method as recited in claim 20, wherein the membership fee is a renewal fee.	6. The method as recited in claim 26, wherein the membership fee is a renewal fee.
Regarding claim 6: Claim 6 is not patentably distinct from claim 6 of the reference application, therefore, claim 6 is obvious.	
7. The method as recited in claim 20, wherein the member includes his/her family in the <b>pharmaceutical benefit program</b> .	7. The method as recited in claim 26, wherein the member includes his/her family in the <b>health care plan</b> .
Regarding claim 7, a pharmaceutical benefit program is an off-shoot of a health care plan – a health care plan provides for medical services, whereas a pharmaceutical benefit program provides for prescription drug medication (which are generated from a medical service visit). Therefore, claim 7 is obvious.	
10. The method as recited in claim 20, wherein the basic listings are provided to <b>pharmaceutical companies</b> free of charge.	12. The method as recited in claim 26, wherein the basic listings are provided to <b>medical service/good providers</b> free of charge.
Regarding claim 10: Claim 10 is not patentably distinct from claim 12 of the reference application, therefore, claim 10 is obvious.	
11. The method as recited in claim 20, wherein the premium listings are provided to <b>pharmaceutical companies</b> upon payment of a premium listing fee.	13. The method as recited in claim 26, wherein the premium listings are provided to <b>medical service/good providers</b> upon payment of a premium listing fee.

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Regarding claim 11: Claim 11 is not patentably distinct from claim 13 of the reference application, therefore, claim 11 is obvious.	
12. The method as recited in claim 20, wherein the premium listings include a link to a customizable web page for the <b>pharmaceutical company</b> that is accessible via a global telecommunications network.	14. The method as recited in claim 26, wherein the premium listings include a link to a customizable web page for the <b>medical service/good providers</b> that is accessible via a global telecommunications network.
Regarding claim 12: Claim 12 is not patentably distinct from claim 14 of the reference application. Claim 12 refers to a web page for a pharmaceutical company whereas, claim 14 of the reference application refers to a web page for a medical service/good provider. The same system can be used for the pharmaceutical company and medical service/good provider, therefore, claim 12 is obvious.	
13. The method as recited in claim 20, wherein the premium listings include a link to the <b>pharmaceutical company's</b> web site.	15. The method as recited in claim 26, wherein the premium listings include a link to the <b>medical service/good provider's</b> web site.
Regarding claim 13: Claim 13 is not patentably distinct from claim 15 of the reference application, therefore, claim 13 is obvious.	
14. The method as recited in claim 20, wherein the premium listings are customized for each <b>pharmaceutical company</b> .	16. The method as recited in claim 26, wherein the premium listings are customized for each <b>medical service/good provider</b> .
Regarding claim 14: Claim 14 is not patentably distinct from claim 16 of the reference application, therefore, claim 14 is obvious.	
15. The method as recited in claim 20, wherein the discount price list and the <b>pharmaceutical</b> listing is accessible via a global telecommunications network.	17. The method as recited in claim 26, wherein the discount price list and the <b>medical service/good provider</b> listing is accessible via a global telecommunications network.
Regarding claim 15: Claim 15 is not patentably distinct from claim 17 of the reference application, therefore, claim 15 is obvious.	

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16. The method as recited in claim 20, wherein the discount price list and the <b>pharmaceutical</b> listing are searchable by the members using one or more search criteria.	18. The method as recited in claim 26, wherein the discount price list and the <b>medical service/good provider</b> listing are searchable by the members using one or more search criteria.
Regarding claim 16: Claim 16 is not patentably distinct from claim 18 of the reference application, therefore, claim 16 is obvious.	
17. The method as recited in claim 20, further comprising the step of providing one or more advertisements by the <b>pharmacy benefit manager</b> to the members.	21. The method as recited in claim 26, further comprising the step of providing one or more advertisements by the <b>network provider</b> to the members.
Regarding claim 17, a pharmacy benefit manager is providing the same function as a network provider, as per claim 20. Therefore, claim 17 of this application is not patentably distinct from claim 21 of the reference application.	
18. The method as recited in claim 17, wherein an advertiser pays the <b>pharmacy benefit manager</b> an advertising fee to provide the advertisements to the members.	22. The method as recited in claim 21, wherein an advertiser pays the <b>network provider</b> an advertising fee to provide the advertisements to the members.
Regarding claim 18, a pharmacy benefit manager is providing the same function as a network provider, as per claim 20. Therefore, claim 18 of this application is not patentably distinct from claim 22 of the reference application.	
19. The method as recited in claim 18, wherein the advertisement provided to a member is based on one or more search criteria used to search the <b>pharmaceutical</b> listing.	23. The method as recited in claim 21, wherein the advertisement provided to a member is based on one or more search criteria used to search the <b>medical service/good provider</b> listing.
Regarding claim 19: Claim 19 is not patentably distinct from claim 23 of the reference application, therefore, claim 19 is obvious.	
20. A method for providing a <b>pharmaceutical benefit program</b> comprising the steps of:  receiving a membership fee from one or more individuals to become members of the <b>pharmaceutical benefit program</b> ;	26. A method for providing a <b>health care plan</b> comprising the steps of:  receiving a membership fee from one or more individuals to become members of the <b>health care plan</b> ;

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<p>obtaining information from one or more <b>pharmaceutical companies</b> that have joined the <b>pharmaceutical benefit program</b>;</p> <p>providing a <b>pharmaceutical</b> listing for the <b>pharmaceuticals</b> based on the obtained information, wherein the <b>pharmaceutical</b> listing is accessible by the members via a global telecommunications network, comprises basic listings and premium listings for the <b>pharmaceutical companies</b>, and is searchable by the members using one or more search criteria comprising a geographic area or a <b>pharmaceutical</b> provided by the <b>pharmaceutical companies</b>; and</p> <p>providing a discount price list listing to the members via the global telecommunications network, wherein the discount price list comprises published rates for the <b>pharmaceuticals</b> provided by the <b>pharmaceutical companies</b> for two or more geographic areas and each member can only access the published rates for the geographic area associated with the member, and</p> <p>the discount price list regulates the cost of <b>pharmaceuticals</b> provided to the members by a <b>pharmacy benefit manager</b> such that the members pay the <b>pharmacy benefit manager</b> in-full directly for any <b>pharmaceuticals</b> provided to the members based on the discount price list.</p>	<p>obtaining information from one or more <b>medical service/good providers</b> that have joined the <b>health care plan</b>;</p> <p>providing a <b>medical service/good provider</b> listing for the <b>medical service/good providers</b> based on the obtained information, wherein the <b>medical service/good provider</b> listing is accessible by the members via a global telecommunications network, comprises basic listings and premium listings for the <b>medical service/good providers</b>, and is searchable by the members using one or more search criteria comprising a geographic area or a <b>service/good</b> provided by the <b>medical service/good providers</b>; and</p> <p>providing a discount price list to the members via the global telecommunications network, wherein the discount price list comprises published rates for the <b>services/goods</b> provided by the <b>medical service/good providers</b> for two or more geographic areas and each member can only access the published rates for the geographic area associated with the member, and</p> <p>the discount price list regulates the cost of <b>services/goods</b> provided to the members by the <b>medical service/good provider</b> such that the members pay the <b>medical service/good providers</b> in-full directly for any <b>services/goods</b> rendered to the members based on the discount price list.</p>
<p>Regarding claim 20:</p> <ul style="list-style-type: none"> <li>• A pharmacy benefit manager is providing the same function as a network provider.</li> <li>• The term pharmaceuticals is encompassed by the generic term of services/goods.</li> </ul> <p>Therefore, claim 20 of this application is not patentably distinct from claim 26 of application 10/620,904.</p>	
<p>21. A computer program embodied on a computer readable medium executable by a server for providing a <b>pharmaceutical benefit program</b> comprising:</p> <p>a code segment for receiving a membership fee from one or more individuals to become members of the <b>pharmaceutical benefit program</b>;</p> <p>a code segment for obtaining information from</p>	<p>27. A computer program embodied on a computer readable medium executable by a server for providing a <b>health care plan</b> comprising:</p> <p>a code segment for receiving a membership fee from one or more individuals to become members of the <b>health care plan</b>;</p> <p>a code segment for obtaining information from one or more <b>medical service/good providers</b></p>



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<p>one or more <b>pharmaceutical companies</b> that have joined the <b>pharmaceutical benefit program</b>;</p> <p>a code segment for providing a <b>pharmaceutical</b> listing for the <b>pharmaceuticals</b> based on the obtained information, wherein the <b>pharmaceutical</b> listing is accessible by the members via a global telecommunications network, comprises basic listings and premium listings for the <b>pharmaceutical companies</b>, and is searchable by the members using one or more search criteria comprising a geographic area or a pharmaceutical provided by the <b>pharmaceutical companies</b>; and</p> <p>a code segment for providing a discount price list to the members via the global telecommunications network, wherein the discount price list comprises published rates for the <b>pharmaceuticals</b> provided by the <b>pharmaceutical companies</b> for two or more geographic areas and each member can only access the published rates for the geographic area associated with the member, and the discount price list regulates the cost of <b>pharmaceuticals</b> provided to the members by a <b>pharmacy benefit manager</b> such that the members pay the <b>pharmacy benefit manager</b> in-full directly for any <b>pharmaceuticals</b> provided to the members based on the discount price list.</p>	<p>that have joined the <b>health care plan</b>; and</p> <p>a code segment for providing a <b>medical service/good provider</b> listing for the <b>medical service/good providers</b> based on the obtained information, wherein the <b>medical service/good provider</b> listing is accessible by the members via a global telecommunications network, comprises basic listings and premium listings for the <b>medical service/good providers</b>, and is searchable by the members using one or more search criteria comprising a geographic area or a <b>service/good</b> provided by the <b>medical service/good providers</b>; and</p> <p>a code segment for providing a discount price list to the members via the global telecommunications network, wherein the discount price list comprises published rates for the <b>services/goods</b> provided by the <b>medical service/good providers</b> for two or more geographic areas and each member can only access the published rates for the geographic area associated with the member, and the discount price list regulates the cost of <b>services/goods</b> provided to the members by the <b>medical service/good provider</b> such that the members pay the <b>medical service/good providers</b> in-full directly for any <b>services/goods</b> rendered to the members based on the discount price list.</p>
<p>Regarding claim 21:</p> <ul style="list-style-type: none"> <li>• A pharmacy benefit manager is providing the same function as a network provider, as per claim 20.</li> <li>• The term pharmaceuticals is encompassed by the generic term of services/goods, as per claim 20.</li> </ul> <p>Therefore, claim 21 of this application is not patentably distinct from claim 27 of application 10/620,904.</p>	
<p>22. An apparatus for providing a <b>pharmaceutical benefit program</b> comprising:</p> <p>a server;</p> <p>one or more storage devices communicably coupled to the server, the one or more data storage devices containing a discount price list to the members via a global telecommunications network, wherein the discount price list comprises published rates for the <b>pharmaceuticals</b> provided by the <b>pharmaceutical companies</b> for two or</p>	<p>28. An apparatus for providing a <b>health care plan</b> comprising:</p> <p>a server;</p> <p>one or more storage devices communicably coupled to the server, the one or more data storage devices containing a discount price list to the members via a global telecommunications network, wherein the discount price list comprises published rates for the <b>services/goods</b> provided by the <b>medical service/good providers</b> for two</p>

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<p>more geographic areas and each member can only access the published rates for the geographic area associated with the member, and the discount price list regulates the cost of <b>pharmaceuticals</b> provided to the members by a <b>pharmacy benefit manager</b> such that the members pay the <b>pharmacy benefit manager</b> in-full directly for any <b>pharmaceuticals</b> provided to the members based on the discount price list;</p> <p>a communications interface communicably coupled to the server that allows a member to access the discount price list and a <b>pharmaceutical</b> listing, wherein the <b>pharmaceutical</b> listing comprises basic listings and premium listings for the <b>pharmaceutical companies</b>, and is searchable by the members using one or more search criteria comprising a geographic area or a <b>pharmaceutical</b> provided by the <b>pharmaceutical companies</b>; and</p> <p>wherein the member is an individual that has paid a membership fee to join the <b>pharmaceutical benefit program</b>.</p>	<p>or more geographic areas and each member can only access the published rates for the geographic area associated with the member, and the discount price list regulates the cost of <b>services/goods</b> provided to the members by the <b>medical service/good provider</b> such that the members pay the <b>medical service/good providers</b> in-full directly for any <b>services/goods</b> rendered to the members based on the discount price list,</p> <p>a communications interface communicably coupled to the server that allows the members to access the discount price list and the <b>medical service/good provider</b> listing, wherein the <b>medical service/good provider</b> listing comprises basic listings and premium listings for the <b>medical service/good providers</b>, and is searchable by the members using one or more search criteria comprising the geographic area or a <b>service/good</b> provided by the <b>medical service/good providers</b>; and</p> <p>wherein the member is an individual that has paid a membership fee to join the <b>health care plan</b>.</p>
<p>Regarding claim 22:</p> <ul style="list-style-type: none"> <li>• A pharmacy benefit manager is providing the same function as a network provider, as per claim 20.</li> <li>• The term pharmaceuticals is encompassed by the generic term of services/goods, as per claim 20.</li> </ul> <p>Therefore, claim 22 of this application is not patentably distinct from claim 28 of application 10/620,904.</p>	

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 2 – 7, 20 – 21, and 23 – 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Care Entrée, (<http://web.archive.org/web/20011130030647/http://carentree.com>, 2001) in view of Ferguson et al., herein after Ferguson (U.S. Patent Number 5,819,092) and Lipton, et al., herein after Lipton, ("Pharmacy benefit management companies: Dimensions of performance", Annual Review of Public Health. Palo Alto: 1999. Vol. 20, page 361), further in view of Goch ("A New Card Deal." Best's Review. Oldwick: Jul 2002 (vol. 103, Iss. 3; page 73).

In regard to claim 20 (currently amended), Care Entree teaches a method for providing a pharmaceutical benefit program comprising the steps of: receiving a membership fee from one or more individuals to become members of the pharmaceutical benefit program (paragraphs 10, 12, and 54).

Care Entrée fails to teach a method comprising the steps of: providing a pharmaceutical listing for the pharmaceuticals based on the obtained information, wherein the pharmaceutical listing is accessible by the members via a global telecommunications network, comprises basic listings and premium listings for the pharmaceutical companies, and is searchable by the members using one or more search criteria comprising a geographic area or a pharmaceutical provided by the pharmaceutical companies; and providing a discount price list listing to the members via the global telecommunications network, wherein the discount price list comprises published rates for the pharmaceuticals provided by the pharmaceutical companies for two or more geographic areas and each member can only access the published rates for the geographic area associated with the member, and the discount price list regulates the cost of pharmaceuticals provided to the members by a pharmacy benefit manager such that the members pay the pharmacy benefit manager in-full directly for any pharmaceuticals provided to the members based on the discount price list.

Ferguson teaches a method comprising the steps of:

providing a pharmaceutical listing for the pharmaceuticals based on the obtained information (column 14, lines 2 – 6), wherein the pharmaceutical listing is accessible by the members via a global telecommunications network (column 7, lines 37 – 42 and column 14, lines 2 – 6), is searchable by the members using one or more search criteria comprising a geographic area or a pharmaceutical provided

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by the pharmaceutical companies (column 10, lines 25 – 65) where the search criteria can be based on a geographical location as the fields may be chosen by the author/user of the program; and

providing a discount price list listing to the members via the global telecommunications network (column 7, lines 37 -42 and column 14, lines 2 – 6 where Ferguson describes online service), wherein the discount price list comprises published rates for the pharmaceuticals provided by the pharmaceutical companies for two or more geographic areas (column 14, lines 2 – 31) where Ferguson discloses a list which can include a person or company as well as disclosing an example online service which may include a catalog of products (which equates to published rates for XXXX) available electronically (column 19, lines 26 -41) and each member can only access the published rates for the geographic area associated with the member (column 3, lines 41 – 55).

Ferguson fails to teach a method comprising the steps of: providing a pharmaceutical listing comprises basic listings and premium listings for the pharmaceutical companies and the discount price list regulates the cost of pharmaceuticals provided to the members by a pharmacy benefit manager such that the members pay the pharmacy benefit manager in-full directly for any pharmaceuticals provided to the members based on the discount price list.

Lipton teaches a method comprising obtaining information from one or more pharmaceutical companies that have joined the pharmaceutical benefit program (paragraph 7), the steps of providing a pharmaceutical listing comprises basic listings and premium listings for the pharmaceutical companies (paragraphs 7, 41 – 45, and 111), and the discount price list regulates the cost of pharmaceuticals provided to the members by a pharmacy benefit manager such that the members pay the pharmacy benefit manager (paragraph 30). Lipton fails to teach the payment in-full directly for any pharmaceuticals provided to the members based on the discount price list.

Goch teaches a method where the payment in-full directly for any pharmaceuticals provided to the members based on the discount price list (paragraph 20). Goch's article discusses the Care Entrée program and supports the Care Entrée reference used.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method where the payment in-full directly for any pharmaceuticals provided to the

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members based on the discount price list as taught by Goch, within the method of Care Entree, Ferguson, and Lipton, with the motivation of ensuring discounted costs for medical services, including pharmaceuticals (paragraph 18).

In regard to Claim 2 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method recited in claim 20. Lipton further teaches a method wherein the discount price list is a variable discount price list that tracks a known standard pharmaceutical price list (paragraph 7). This is accomplished through the use of negotiated discounts with pharmacy networks, as well as controlling the formularies used by the pharmacy benefit manager (i.e. the pharmacy benefit manager chooses which drugs to include in the formulary, thereby lowering the cost of the pharmaceuticals).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method wherein the discount price list is a variable discount price list that tracks a known standard pharmaceutical price list as taught by Lipton with the motivation of managing drug costs and services (paragraphs 32 through 34).

In regard to Claim 3 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Care Entrée further teaches a method wherein the membership fee is paid by the individual (paragraph 10). The Care Entrée program discloses a method in which anyone can pay a certain fee to join a health care plan.

In regard to Claim 4 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Care Entrée further teaches a method wherein the membership fee is paid by the individual's employer (paragraph 67).

In regard to Claim 5 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Care Entrée further teaches a method wherein the membership fee is paid

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by the individual's business (paragraph 67). The Examiner interprets an individual's employer to be equivalent to an individual's business. In either case, the individual is provided the opportunity to offer employees (including self) a supplemental health care plan.

In regard to Claim 6 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Care Entrée further teaches a method wherein the membership fee is a renewal fee (paragraph 6). The Examiner interprets the monthly fee to be a renewal fee - the member is paying a renewal fee every month.

In regard to Claim 7 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Care Entrée further teaches a method wherein the member includes his/her family in the pharmaceutical benefit program (paragraph 10). The Care Entrée program allows the entire family (including all dependents recognized by the Internal Revenue Service) to join the health care plan.

In regard to Claim 10 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Ferguson further teaches a method wherein the basic listings are provided to pharmaceutical companies free of charge (column 13, line 66 through column 14, line 12). The Examiner interprets the look up directory disclosed by Ferguson to include a "basic" listing - where a name, address, and other related information is available.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method wherein the basic listings are provided to pharmaceutical companies free of charge as taught by Ferguson with the motivation of providing a tool to allow a directory look up service for implementing online searchable directories (column 4, lines 33 -50).

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In regard to Claim 11 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Ferguson further teaches a method wherein the premium listings are provided to pharmaceutical companies upon payment of a premium listing fee (column 14, lines 6 – 12 and column 18, lines 33 – 35). The Examiner interprets the look up directory disclosed by Ferguson to include a “premium” listing – where a name, address, and a hyperlinked document with other related information is available.

The motivation to combine the teachings of Care Entrée, Lipton, and Ferguson is discussed in the rejection of claim 10.

In regard to Claim 12 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Ferguson further teaches a method wherein the premium listings include a link to a customizable web page for the pharmaceutical company that is accessible via a global telecommunications network (column 14, lines 6 – 19 and column 7, lines 38 – 42). The hyperlinks allow the user to access a site in which qualified users may submit new entries, thereby making it customizable.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method wherein the premium listings include a link to a customizable web page for the pharmaceutical company that is accessible via a global telecommunications network as taught by Ferguson with the motivation of allowing a user to create online services using existing information (column 7, lines 1 – 4). Examples of possible existing information include a pharmaceutical medication database and a pharmaceutical company.

In regard to Claim 13 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Ferguson further teaches a method wherein the premium listings include a link to the pharmaceutical company's web site (column 14, lines 6 – 19 and column 7, lines 37 – 42). The hyperlinks allow the user to access a site in which qualified users may submit new entries, thereby making it customizable.

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The motivation to combine the teachings of Care Entrée and Lipton is discussed in the rejection of claim 12.

In regard to Claim 14 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Ferguson teaches a method wherein the premium listings are customized for each pharmaceutical company (column 14, lines 6 – 19 and column 7, lines 37 – 42). The hyperlinks allow the user to access a site in which qualified users may submit new entries, thereby making it customizable.

The motivation to combine the teachings of Care Entrée and Lipton is discussed in the rejection of claim 12.

In regard to Claim 15 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Ferguson further teaches a method wherein the discount price list and the pharmaceutical listing is accessible via a global telecommunications network (column 14, lines 6 – 19 and column 7, lines 37 – 42). The Examiner interprets the discount price list to be a function of the directory look up disclosed by Ferguson. It provides information to users of a pharmacy benefit plan.

The motivation to combine the teachings of Care Entrée and Lipton is discussed in the rejection of claim 12.

In regard to Claim 16 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Ferguson further teaches a method wherein the discount price list and the pharmaceutical listing are searchable by the members using one or more search criteria (column 10, lines 62 – 65). Ferguson discloses a method where the users are allowed to perform searches and specify the search criteria.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method wherein the discount price list and the pharmaceutical listing are searchable by the members using one or more search criteria as taught by Ferguson with the motivation



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of enabling users to search listings or entries in a directory by a variety of techniques including names, categories, and full text search (column 14, lines 10 – 12).

In regard to Claim 17 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 20. Ferguson further teaches a method further comprising the step of providing one or more advertisements by the pharmacy benefit manager to the members (column 14, lines 6 – 12 and column 14, lines 21 – 31). Ferguson discloses a method of online classified advertisements, which are available using hyperlinked documents.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method further comprising the step of providing one or more advertisements by the pharmacy benefit manager to the members as taught by Ferguson with the motivation of increasing the sales of a pharmaceutical company by the use of advertisements in the discount list provided by the Pharmacy Benefit Manager (column 9, lines 54 – 56). An online service can be used as a tool to enable electronic commerce. In this case, the online service would advertise a pharmaceutical company's products, which a member could then present to his/her health care provider.

In regard to Claim 18 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 17. Ferguson further teaches a method wherein an advertiser pays the pharmacy benefit manager an advertising fee to provide the advertisements to the members (column 18, lines 33 – 35).

The motivation to combine the teachings of Care Entrée, Lipton, and Ferguson is discussed in the rejection of claim 17, and incorporated herein.

In regard to Claim 19 (previously presented), Care Entrée, Ferguson, Lipton, and Goch teach the method as recited in claim 18. Ferguson further teaches a method wherein the advertisement provided to a member is based on one or more search criteria used to search the pharmaceutical listing (column 14, lines 6 - 12). Searches can be conducted based on names, categories, and/or full text searches.

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Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method wherein the advertisement provided to a member is based on one or more search criteria used to search the pharmaceutical listing as taught by Ferguson with the motivation of introducing a revenue generating tool by charging a fee for the online service (column 14, lines 30 – 31).

In regard to claim 21 (currently amended), Care Entrée teaches a computer program embodied on a computer readable medium executable by a server for providing a pharmaceutical benefit program comprising: a code segment for receiving a membership fee from one or more individuals to become members of the pharmaceutical benefit program (paragraph 10) and a code segment for obtaining information from one or more pharmaceutical companies that have joined the pharmaceutical benefit program.

Care Entrée fails to teach a computer program embodied on a computer readable medium executable by a server for providing a pharmaceutical benefit program comprising:

a code segment for providing a pharmaceutical listing for the pharmaceuticals based on the obtained information, wherein the pharmaceutical listing is accessible by the members via a global telecommunications network, comprises basic listings and premium listings for the pharmaceutical companies, and is searchable by the members using one or more search criteria comprising a geographic area or a pharmaceutical provided by the pharmaceutical companies; and

a code segment for providing a discount price list to the members via the global telecommunications network, wherein the discount price list comprises published rates for the pharmaceuticals provided by the pharmaceutical companies for two or more geographic areas and each member can only access the published rates for the geographic area associated with the member, and the discount price list regulates the cost of pharmaceuticals provided to the members by a pharmacy benefit manager such that the members pay the pharmacy benefit manager in-full directly for any pharmaceuticals provided to the members based on the discount price list.

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Ferguson teaches a computer program embodied on a computer readable medium executable by a server for providing a pharmaceutical benefit program comprising: a code segment (column 2, lines 39 – 50); a code segment for providing a pharmaceutical listing for the pharmaceuticals based on the obtained information (column 14, lines 2 – 6), wherein the pharmaceutical listing is accessible by the members via a global telecommunications network (column 7, lines 37 – 42 and column 14, lines 2 – 6), and is searchable by the members using one or more search criteria comprising a geographic area or a pharmaceutical provided by the pharmaceutical companies (column 10, lines 62 – 65) and

a code segment (column 2, lines 39 – 50) for providing a discount price list to the members via the global telecommunications network (column 7, lines 37 – 42 and column 14, lines 2 – 6) wherein the discount price list comprises published rates for the pharmaceuticals provided by the pharmaceutical companies for two or more geographic areas (column 14, lines 21 – 31) and each member can only access the published rates for the geographic area associated with the member (column 3, lines 41 – 55).

Ferguson fails to teach a computer program embodied on a computer readable medium executable by a server for providing a pharmaceutical benefit program comprising: basic listings and premium listings for the pharmaceutical companies, and the discount price list regulates the cost of pharmaceuticals provided to the members by a pharmacy benefit manager such that the members pay the pharmacy benefit manager in-full directly for any pharmaceuticals provided to the members based on the discount price list.

Lipton teaches a computer program embodied on a computer readable medium executable by a server for providing a pharmaceutical benefit program comprising: basic listings and premium listings for the pharmaceutical companies (paragraphs 7, 41—45, and 111) and the discount price list regulates the cost of pharmaceuticals provided to the members by a pharmacy benefit manager such that the members pay the pharmacy benefit manager (paragraph 30). Lipton fails to teach payment of the pharmacy benefit manager in-full directly for any pharmaceuticals provided to the members based on the discount price list.

Goch teaches payment of the pharmacy benefit manager in-full directly for any pharmaceuticals provided to the members based on the discount price list (paragraph 20).

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The motivation to combine the teachings of Care Entrée, Lipton, Ferguson, and Goch is discussed in the rejection of claim 20.

In regard to claim 23 (currently amended), Care Entrée, Ferguson, Lipton, and Goch teach the apparatus of claim 22. Care Entrée further teaches an apparatus wherein: the pharmaceutical benefit program comprises a network of two or more pharmacies (paragraph 53).

Care Entrée fails to teach an apparatus wherein the discount price list comprises a variable discount drug price list; and wherein the premium drug price listing provides a link to a separate page about the drug.

Ferguson teaches an apparatus wherein the discount price list comprises a variable discount drug price list (column 14, lines 13 – 19); and wherein the premium drug price listing provides a link to a separate page about the drug (column 14, lines 13 – 19). ‘

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an apparatus wherein the discount price list comprises a variable discount drug price list; and wherein the premium drug price listing provides a link to a separate page about the drug as taught by Ferguson, within the method of Care Entrée, Lipton, and Goch, with the motivation of providing a system in which a user can view a discount, as well as basic or premium drug price listings via a global telecommunications network (column 7, lines 36 – 42).

In regard to claim 24 (currently amended), Care Entrée, Ferguson, Lipton, and Goch teaches the apparatus of claim 23. Ferguson further teaches an apparatus where the separate page about the drug is defined further as being a link to the web site on a global telecommunications network of the drug company (column 14, lines 13 – 19).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an apparatus where the separate page about the drug is defined further as being a link to the web site on a global telecommunications network of the drug company as taught by Ferguson, within the method of Care Entrée, Lipton, and Goch, with the motivation of creating a link

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between the drug, the discount drug price, and the pharmaceutical company on a global communication system (column 10, lines 55 – 58). By creating this link, an association is generated between the various online documents.

In regard to claim 25 (currently amended), Care Entrée, Ferguson, Lipton, and Goch teach the apparatus of claim 23. Ferguson further teaches an apparatus wherein the separate page about the drug is defined further as an advertisement for that specific drug (column 14, lines 13 – 31).

The motivation to combine the teachings of Care Entrée, Ferguson, Lipton, and Goch is discussed in the rejection of claim 24, and incorporated herein.

In regard to claim 26 (currently amended), Care Entrée, Ferguson, Lipton, and Goch teach the apparatus of claim 23. Ferguson further teaches an apparatus where the separate page about the drug is defined further as a web page with several drugs advertised by a single manufacturer (column 14, lines 13 – 31).

The motivation to combine the teachings of Care Entrée, Ferguson, Lipton, and Goch is discussed in the rejection of claim 24, and incorporated herein.

In regard to claim 27 (currently amended), Care Entrée, Ferguson, Lipton, and Goch teach the apparatus of claim 23. Ferguson further teaches an apparatus wherein the basic and premium listings comprises a drug name, drug strength and a price (column 7, lines 10 – 18 and column 13, line 66 through column 14, line 1).

The motivation to combine the teachings of Care Entrée, Ferguson, Lipton, and Goch is discussed in the rejection of claim 24, and incorporated herein.

8. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson et al., herein after Ferguson (U.S. Patent Number 5,819,092) Care Entrée, in view of (<http://web.archive.org/web/200111130030647/http://carentree.com>, 2001) and Lipton, et al., herein after

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Lipton, ("Pharmacy benefit management companies: Dimensions of performance", Annual Review of Public Health. Palo Alto: 1999. Vol. 20, page 361), further in view of Goch ("A New Card Deal." Best's Review. Oldwick: Jul 2002 (vol. 103, Iss. 3; page 73).

In regard to claim 22 (currently amended), Ferguson teaches an apparatus for providing a pharmaceutical benefit program comprising:

a server (column 7, lines 42 – 47);

one or more storage devices communicably coupled to the server (column 1, lines 44 – 45 and column 7, lines 41 – 49), the one or more data storage devices containing a discount price list to the members via a global telecommunications network (column 7, lines 37 – 42 and column 14, lines 2 – 6); wherein the discount price list comprises published rates for the pharmaceuticals provided by the pharmaceutical companies for two or more geographic areas (column 14, lines 21 – 31) and each member can only access the published rates for the geographic area associated with the member (column 3, lines 41 – 55) and the communications interface is searchable by the members using one or more search criteria comprising a geographic area or a pharmaceutical provided by the pharmaceutical companies (column 10, lines 62 – 65).

Ferguson fails to teach an apparatus comprising: the discount price list regulates the cost of pharmaceuticals provided to the members by a pharmacy benefit manager such that the members pay the pharmacy benefit manager in-full directly for any pharmaceuticals provided to the members based on the discount price list; a communications interface communicably coupled to the server that allows a member to access the discount price; a pharmaceutical listing, wherein the pharmaceutical listing comprises basic listings and premium listings for the pharmaceutical companies, and wherein the member is an individual that has paid a membership fee to join the pharmaceutical benefit program.

Care Entrée teaches an apparatus comprising: a communications interface communicably coupled to the server that allows a member to access the discount price (paragraphs 11 – 13, 36, 38, 41, 61, 86, and 97) and wherein the member is an individual that has paid a membership fee to join the pharmaceutical benefit program (paragraph 41).

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Care Entrée fails to teach an apparatus comprising: the discount price list regulates the cost of pharmaceuticals provided to the members by a pharmacy benefit manager such that the members pay the pharmacy benefit manager in-full directly for any pharmaceuticals provided to the members based on the discount price list; and, a pharmaceutical listing, wherein the pharmaceutical listing comprises basic listings and premium listings for the pharmaceutical companies.

Lipton teaches an apparatus comprising: the discount price list regulates the cost of pharmaceuticals provided to the members by a pharmacy benefit manager such that the members pay the pharmacy benefit manager in-full directly for any pharmaceuticals provided to the members based on the discount price list (paragraph 30); and, a pharmaceutical listing, wherein the pharmaceutical listing comprises basic listings and premium listings for the pharmaceutical companies (paragraphs 7, 41 – 45, and 111). Lipton fails to teach an apparatus in which payment is made to the pharmacy benefit manager in-full directly for any pharmaceuticals provided to the members based on the discount price list.

Goch teaches an apparatus in which payment is made to the pharmacy benefit manager in-full directly for any pharmaceuticals provided to the members based on the discount price list (paragraph 20).

The motivation to combine the teachings of Ferguson, Care Entrée, Lipton, and Goch is discussed in the rejection of claim 20, and incorporated herein.

### ***Response to Amendment***

9. Applicant's arguments filed November 5, 2008 have been fully considered but they are not persuasive. Applicant's arguments will be address herein below in the order in which they appear in the response filed.

(1) In regard to claims 20 - 22, the applicants arguments are not persuasive as the limitations claimed are taught by the Care Entrée program, in view of Ferguson and Lipton, in further view of Goch. The applicant argues that combination of the Care Entrée and Lipton references do not disclose discount lists to individuals or members.

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The Examiner disagrees in that the Care Entree program is a managed health care program which negotiates the cost of medical services or goods provided, including pharmaceuticals, for individual members who have paid a member ship fee, as discussed in the rejection of claim 20, and provides a price list of services specific to a geographical region (Care Entrée: paragraphs 47 and 48).

Lipton, however, discloses a method in which PBM's represent groups (i.e. employers, HMO's).

The difference between the Care Entrée and the Lipton subject matter is that a PBM in the Care Entrée system collects fees and costs of medical procedures/pharmaceuticals from an individual, whereas Lipton collects from groups or organizations. The Goch reference is an article describing the Care Entrée system, and supports the Care Entrée reference by supplementing the information described in <http://web.archive.org/web/20011130030647/http://carentree.com>.

Since each element (collect of fees and costs of medical procedures/pharmaceuticals) and the function of the PBM are shown in the prior art, albeit shown as separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself – that is in the substitution of the collection of fees/costs from the group or organization of Lipton for the collection of fees/costs from individuals of Care Entree.

Thus, the simple substitution of one know element for another producing a predictable result renders the claim obvious.

(2) The applicant argues that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to provide members with pharmaceutical listing containing basic and premium listings of pharmaceuticals. The Examiner disagrees, as stated in the rejections of claims 20, 21, and 22, in that Ferguson teaches an online system in which members can search a directory (column 4, lines 33 – 50), which the Examiner interprets as a basic listing. The directory can include hyperlinks (equating the directory to a premium listing) which would direct the member to a web page containing advertisements and/or information regarding a particular pharmaceutical company (column 26, lines 8 – 24).

(3) The Applicant argues that Care Entrée, Lipton and Goch do not disclose, teach or suggest providing the discount price list to the members via the global telecommunications network. In response



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to the Applicant's argument, it is respectfully submitted that the Examiner has applied new passages and new citations to the amended claims. The Examiner notes that the amended limitations were not in the previously pending claims; as such, Applicant's remarks with the regard to the application of Care Entrée, Lipton and Goch are addressed in the above Office Action.

(4) The Applicant argues that it would not be obvious to combine the non-Internet based systems of Care Entree, Lipton, and Goch with Ferguson's software development tool. The Examiner respectfully disagrees. The Care Entrée program is internet based (see <http://web.archive.org/web/200111130030647/http://carentree.com>, 2001) which would make it obvious to combine the teaching of Ferguson's online directory with the teaching of Care Entrée. Thus, the Applicant's argument is non-persuasive.

Claims 2 – 9 and 12 – 16 and 23 - 27 are dependent on claim 20, 21 and/or 22, therefore, the same rationale for rejection is applied.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTINE K. RAPILLO whose telephone number is (571)270-3325. The examiner can normally be reached on Monday to Thursday 6:30 am to 4 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Luke Gilligan can be reached on 571-272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KKR

/Robert Morgan/  
Primary Examiner, Art Unit 3626